

## Article 8.

### Mutual Insurance Companies.

#### **§ 58-8-1. Mutual insurance companies organized; requisites for doing business.**

No policy may be issued by a mutual company until the president and the secretary of the company have certified under oath that every subscription for insurance in the list presented to the Commissioner for approval is genuine, and made with an agreement with every subscriber for insurance that he will take the policies subscribed for by him within 30 days after the granting of a license to the company by the Commissioner to issue policies. Any person making a false oath in respect to the certificate is guilty of a Class I felony. (1899, c. 54, ss. 25, 32, 34; 1901, c. 391, s. 3; 1903, c. 438, s. 4; Rev., s. 4738; 1911, c. 93; C.S., s. 6346; 1945, c. 386; 1989 (Reg. Sess., 1990), c. 1054, s. 4; 1993 (Reg. Sess., 1994), c. 767, s. 24.)

#### **§ 58-8-5. Manner of amending charter.**

(a) A domestic mutual insurance company may hereafter amend its charter in the following manner only:

- (1) A meeting of the board of directors shall be called in accordance with the bylaws, specifying the amendment to be voted upon at such meeting;
- (2) If at such meeting two thirds of the directors present vote in favor of the proposed amendment, then the president and secretary shall under oath make a certificate to this effect, which certificate shall set forth the call for such meeting, the service of such call upon all directors, and the minutes of the meeting relating to the adoption of the proposed amendment;
- (3) If the meeting at which the proposed amendment is to be considered is a special meeting, rather than a regular annual meeting of policyholders, such special meeting can be called only after the Commissioner has given his approval in writing;
- (4) If at such policyholders' meeting two thirds of those voting in person or by proxy shall vote in favor of any proposed amendment, the president and secretary shall make a certificate under oath setting forth such fact together with the full text of the amendment thus approved. Said certificate shall, within 30 days after such meeting, be submitted to the Commissioner for his approval as conforming to the requirements of law, and it shall be the duty of the Commissioner to act upon all proposed amendments within 10 days after the filing of such certificate with him.

(b) All charter amendments heretofore issued upon application of the board of directors of any domestic mutual insurance company are hereby validated, if otherwise legally adopted. (1943, c. 170; 1947, c. 721; 1991, c. 720, s. 4; 2001-223, s. 9.1.)

#### **§ 58-8-10. Policyholders are members of mutual companies.**

Every person insured by a mutual insurance company is a member while that person's policy is in force, entitled to one vote for each policy that person holds, and must be notified of the time and place of holding the company's meetings by a written notice or by an imprint upon the back of each policy, receipt, or certificate of renewal, as follows:

The insured is hereby notified that by virtue of this policy the insured is a member of the \_\_\_\_\_ insurance company, and that the annual meetings of the company are held at its home office on the \_\_\_\_\_ day of \_\_\_\_\_, in each year, at \_\_\_\_\_ o'clock.

The blanks shall be duly filled in print and are a sufficient notice. A corporation that becomes a member of a mutual insurance company may authorize any person to represent the corporation; and this representative has all the rights of an individual member. A person holding property in trust may insure it in a mutual insurance company, and as trustee assume the liability and be entitled to the rights of a member; but is not personally liable upon the contract of insurance. Members may vote by proxies, dated and executed within one year after receipt, and returned and recorded on the books of the company three days or more before the meeting at which they are to be used. (1899, c. 54, s. 33; Rev., s. 4739; C.S., s. 6348; 1945, c. 386; 1947, c. 721; 1998-211, s. 37.1(a).)

#### **§ 58-8-15. Directors in mutual companies.**

Every mutual insurance company shall elect by ballot a board of not less than seven directors, who shall manage and conduct its business and hold office for one year or for such term as the bylaws provide and until their successors are qualified. The directors need not be residents of this State or members of the company. In companies with a guaranty capital, no more than one-half of the directors shall be elected by the holders of guaranty capital, except where guaranty capital holders are policyholders. Policyholders which are holders of guaranty capital shall be entitled to one vote for each policy that person holds and one vote for each unit of guaranty capital that person holds. (1899, c. 54, s. 33; Rev., s. 4739; C.S., s. 6349; 1945, c. 386; 1971, c. 751; 2003-212, s. 14.)

#### **§ 58-8-20. Mutual companies with a guaranty capital.**

(a) A mutual insurance company formed as provided in Articles 1 through 64 of this Chapter, in lieu of the contributed surplus required for the organization of mutual companies under the provisions of G.S. 58-7-75, or a mutual insurance company now existing, may, with the prior approval of the Commissioner, tender a guaranty capital offering of not less than fifty thousand dollars (\$50,000), divided into units of one hundred dollars (\$100.00) each, which shall be invested in the same manner as is provided in this Chapter for the investment of the capital stock of insurance companies.

(a1) Guaranty capital may be issued by an existing domestic mutual insurance company only under the following terms and conditions:

- (1) To aid and assist a financially troubled domestic mutual insurance company which otherwise faces rehabilitation or liquidation by this Department; or
- (2) For any other reason as presented in a petition to the Commissioner and which is found by the Commissioner to be reasonable, justifiable, and in the best interest of all the policyholders of the company.

Guaranty capital issued under subdivision (2) of this subsection shall require written notification of the action proposed by the board of directors of the company to be mailed to the policyholders of the company not less than 30 days before the meeting when the action may be taken. The written notification shall be advertised in two newspapers of general circulation, approved by the Commissioner, not less than three times a week for a period of not less than four weeks before the meeting. The written notification to policyholders shall include a proxy statement to allow policyholders to vote on the proposed action without personal attendance at the meeting, and the Commissioner shall approve both the written notification and the proxy statement. The proposed

action shall be effected by a vote of two-thirds of the policyholders voting thereon in person or by proxy.

(b) The board of directors of a company may distribute interest to the holders of guaranty capital in accordance with the guaranty capital filing approved by the Department.

(c) Guaranty capital shall be applied to the payment of losses only when the company has exhausted its cash in hand and the invested assets, exclusive of uncollected premiums, and when thus impaired, the directors may make good the whole or any part of it by assessments upon the contingent funds of the company at the date of such impairment.

(d) Guaranty capital holders are entitled to one vote per unit of guaranty capital. Guaranty capital holders who are not policyholders are not entitled to participate in the policyholder votes prescribed under subdivision (a1)(2) and subsection (e) of this section.

(e) Guaranty capital may be reduced or retired by vote of the policyholders of the company and the assent of the Commissioner, if the net assets of the company above its reserve and all other claims and obligations, exclusive of guaranty capital, for two years immediately preceding and including the date of its last annual statement, is not less than twenty-five percent (25%) of the guaranty capital. Written notice of the proposed action on the part of the company must be mailed to each policyholder of the company not less than 30 days before the meeting when the action may be taken, and must also be advertised in two papers of general circulation, approved by the Commissioner, not less than three times a week for a period of not less than four weeks before the meeting. The written notification to policyholders shall include a proxy statement to allow policyholders to vote on the proposed action without personal attendance at the meeting, and the Commissioner shall approve both the written notification and the proxy statement. An affirmative vote of at least two-thirds of the policyholders voting in person or by proxy is required to adopt the proposed action.

(f) No insurance company with guaranty capital shall distribute to its holders of guaranty capital its assets, except as provided in the guaranty capital filing as approved by the Commissioner.

(g) In the event of a merger, demutualization, or other event where the entity ceases to exist, guaranty capital shall only be returned or repaid to the holders of guaranty capital to the extent that the guaranty capital has been contributed together with accrued interest as specified in the filing approved by the Commissioner. (1899, c. 54, s. 34; Rev., s. 4740; 1911, c. 196, s. 3; C.S., s. 6350; 1945, c. 386; 1971, c. 752; 1981, c. 723; 1989, c. 320; 1991, c. 720, s. 10; 1993, c. 452, s. 17; 2003-212, s. 15; 2005-215, s. 26.)

#### **§ 58-8-25. Dividends to policyholders.**

(a) Any participating or dividend-paying company, stock or mutual or foreign or domestic, that writes other than life insurance or workers' compensation insurance and employers' liability insurance in connection therewith, may declare and pay a dividend to policyholders from its unassigned surplus, as reflected in the company's most recent annual or quarterly statement filed with the Commissioner under G.S. 58-2-165, which shall include only its surplus in excess of any required minimum surplus. No such dividend shall be paid unless it is fair and equitable and for the best interest of the company and its policyholders. In declaring any dividend to its policyholders, any such company may make reasonable classifications of policies expiring during a fixed period, upon the basis of each general kind of insurance covered by those policies and by territorial divisions of the location of risks by states, except that in fixing the amount of dividends to be paid on each general kind of insurance, the dividends shall be uniform in rate and applicable

to the majority of risks within that general kind of insurance, and exceptions may be made as to any class or classes of risk and a different rate or amount of dividends paid on the class or classes if the conditions applicable to the class or classes differ substantially from the condition applicable to the kind of insurance as a whole. Every such company shall have an equal rate of dividend for the same term on all policies insuring risks in the same classification. The payment of dividends to policyholders shall not be contingent upon the maintenance or renewal of the policy. All dividends shall be paid to the policyholder unless a written assignment of those dividends is executed. Neither the payment of dividends nor the rate of the dividends may be guaranteed by any company, or its agent, before the declaration of the dividend by the board of directors of the company. The holders of policies of insurance issued by a company in compliance with the orders of any public official, bureau or committee, in conformity with any statutory requirement or voluntary arrangement, for the issuance of insurance to risks not otherwise acceptable to the company, may be established as a separate class of risks.

(b) Any participating or dividend-paying company, stock or mutual or foreign or domestic, that writes workers' compensation insurance and employers' liability insurance in connection therewith may declare and pay a dividend to policyholders from its unassigned surplus, as reflected in the company's most recent statement filed with the Commissioner under G.S. 58-2-165, which shall include only its surplus in excess of any required minimum surplus. No such dividend shall be paid unless it is fair and equitable and for the best interest of the company and its policyholders. In declaring any dividend to its policyholders, any such company may make reasonable classifications of policies expiring during a fixed period. The payment of dividends to policyholders shall not be contingent upon the maintenance or renewal of the policy. All dividends shall be paid to the policyholder unless a written assignment of those dividends is executed. Neither the payment of dividends nor the rate of the dividends may be guaranteed by any company, or its agent, before the declaration of the dividend by the board of directors of the company. The holders of policies of insurance issued by a company in compliance with the orders of any public official, bureau, or committee, in conformity with any statutory requirement or voluntary arrangement, for the issuance of insurance to risks not otherwise acceptable to the company, may be established as a separate class of risks. (1899, c. 54, s. 35; Rev., s. 4741; C.S., s. 6351; 1935, c. 89; 1945, c. 386; 1947, c. 721; 1955, c. 645; 1983, c. 374, ss. 2, 3; 2001-223, s. 9.2.)

#### **§ 58-8-30. Contingent liability of policyholders.**

Every insurance company shall in its bylaws and policies prescribe the contingent liability, if any, of its members for the payment of losses, reserves and expenses not provided for by its assets, which contingent liability shall be in accordance with the provisions of G.S. 58-7-75. Each member is liable for the payment of his proportionate share of any assessments made by the company in accordance with the law, his contract and the bylaws of the company on account of losses incurred while he was a member, if he is notified of such assessment within one year after the expiration of his policy. When any reduction is made in the contingent liability of members, it shall apply proportionately to all policies in force. (1945, c. 386.)

#### **§ 58-8-35. Contingent liability printed on policy.**

Every insurance company licensed to do business in this State shall print on each policy in clear and explicit language the full contingent liability of its members. (1945, c. 386; 1991, c. 644, s. 1; 1991 (Reg. Sess., 1992), c. 837, s. 2.)

**§ 58-8-36. Administrative fees.**

Statewide multiline limited assessable mutual insurance companies are not subject to the provisions of G.S. 58-33-85(b). (2011-196, s. 12.)

**§ 58-8-40. Nonassessable policies; foreign or alien companies.**

No foreign or alien insurance company shall be licensed to issue in this State nonassessable policies unless it has a free surplus equal in amount to that required of a domestic insurance company, writing the same kind or kinds of insurance, and in addition thereto has fully complied with the requirements of the government under which it was organized; and no foreign or alien insurance company may be licensed to do business in this State to issue assessable policies if it issues nonassessable policies in any other state or country unless all policies shall state that any assessment shall be for the exclusive benefit of holders of policies which provide for such contingent liability and the holders of policies subject to assessment shall not be liable to assessment in an amount greater in proportion to the total deficiency than the ratio that the deficiency attributable to the assessable business bears to the total deficiency. (1945, c. 386.)

**§ 58-8-45. Waiver of forfeiture in policies assigned or pledged; notice of assignment; payment of assessment or premium by assignee or mortgagee.**

When any policy of insurance is issued by any mutual insurance company or association other than life, organized under the laws of this State and such policy is assigned or pledged as collateral security for the payment of a debt, such company or association, by its president and secretary or other managing officers, may insert in such policy so assigned or pledged, or attach thereto as a rider thereon, a provision or provisions to be approved by the Commissioner, whereby any or all conditions of the policy which work a suspension or forfeiture and especially the provisions of the statute which limits such corporation to insure only property of its members, may be waived in such case for the benefit of the assignee or mortgagee. In case any such company or association shall consent to such assignment of any policy or policies, or the proceeds thereof, it may nevertheless at any time thereafter, by its president and secretary or such other officer as may be authorized by the board of directors, cancel such policy by giving the assignee or mortgagee not less than 10 days' notice in writing: Provided, however, a longer period may be agreed upon by the company or association and such assignee or mortgagee. And the president and secretary of such company or association, with the approval of the Commissioner, may agree with the assignee or mortgagee upon an assessment or premium to be paid to the insurer in case the insured shall not pay the same, which shall not be less than such a rate or sum of money as may be produced by the average assessments or premiums made or charged by like company or association during a period of five years next preceding the year of such agreement and assignment. When an assignment is made as herein provided the policy or policies so assigned or pledged, subject to the conditions herein, shall remain in full force and effect for the benefit of the assignee or mortgagee, notwithstanding the title or ownership of the assured to the property insured, or to any interest therein, shall be in any manner changed, transferred or encumbered. (Ex. Sess., 1920, c. 79; C.S. s. 6351(a); 1945, c. 386; 1991, c. 720, s. 4.)

**§ 58-8-50. Guaranty against assessments prohibited.**

If any director, officer, or agent of a mutual insurance company, either officially or privately, gives a guarantee to a policyholder of the company against an assessment to which that policyholder would otherwise be liable, the director, officer, or agent shall be punished by a fine

not exceeding one thousand dollars (\$1,000) for each offense. (1899, c. 54, s. 100; Rev., s. 3496; C.S., s. 6352; 1945, c. 386; 2003-212, s. 16.)

**§ 58-8-55. Manner of making assessments; rights and liabilities of policyholders.**

When a mutual insurance company is not possessed of cash funds above its reserve sufficient for the payment of insured losses and expenses, it must make an assessment for the amount needed to pay such losses and expenses upon its members liable to assessment therefor in proportion to their several liabilities. The company shall cause to be recorded in a book kept for that purpose the order for the assessment, together with a statement which must set forth the condition of the company at the date of the order, the amount of its cash assets and deposits, notes, or other contingent funds liable to the assessment, the amount the assessment calls for, and the particular losses or liabilities it is made to provide for. This record must be made and signed by the directors who voted for the order before any part of the assessment is collected, and any person liable to the assessment may inspect and take a copy of the same. When, by reason of depreciation or loss of its funds or otherwise, the cash assets of such company, after providing for its other debts, are less than the required premium reserve upon its policies, it must make good the deficiency by assessment in the manner above provided. If the directors are of the opinion that the company is liable to become insolvent they may, instead of such assessment, make two assessments, the first determining what each policyholder must equitably pay or receive in case of withdrawal from the company and having his policy canceled; the second, what further sum each must pay in order to reinsure the unexpired term of his policy at the same rate as the whole was insured at first. Each policyholder must pay or receive according to the first assessment, and his policy shall be cancelled unless he pays the sum further determined by the second assessment, in which case his policy continues in force; but in neither case may a policyholder receive or have credited to him more than he would have received on having his policy canceled by a vote of the directors under the bylaws. (1899, c. 54, ss. 36, 37; Rev., s. 4742; C.S., s. 6353; 1945, c. 386.)

**§ 58-8-60. Independent charters for members of the Farmers Mutual Fire Insurance Association of North Carolina.**

(a) Each branch of the Farmers Mutual Fire Insurance Association of North Carolina ("Association"), created by Chapter 343 of the 1893 Private Laws of North Carolina, as amended, shall adopt articles of incorporation by a majority vote of its board of directors.

(b) The articles of incorporation shall provide for the name of the corporation, to be approved by the Commissioner; the kinds of insurance it proposes to transact and on what business plan or principle; and the place of its location in the State. The certificate of incorporation must be subscribed and sworn to by a majority of the board of directors before an officer authorized to take acknowledgement of deeds, who shall certify the certificate to the Commissioner. The Commissioner shall review the certificate and articles of incorporation and file them with the Secretary of State in accordance with G.S. 58-7-35.

(c) The independently chartered former branches of the Association shall transact the same kinds of insurance and operate under the same business plan as they did as members of the Association. The assets of each independently chartered former branch shall remain the assets of the corporation to which the branch is converted pursuant to this section.

(d) The independently chartered former branches of the Association may change their methods of operation upon compliance with G.S. 58-8-5 and applicable provisions of this Chapter.

(e) The corporations created under this section are subject to applicable provisions of this Chapter.

(f) The corporations created under this section shall enjoy the same rights, privileges, and exemptions as enjoyed by the former Association.

(g) No officer nor member of the board of directors of an independently chartered former branch shall incur any liability for actions taken in good faith pursuant to this section. (1993, c. 495, s. 1; 2005-424, s. 1.4.)